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Viewing cable 09NAIROBI1830, VISAS DONKEY: CORRUPTION 212(F) VISA REVOCATION

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Reference ID	Created	Released	Classification	Origin
09NAIROBI1830	2009-09-01 10:09	2011-08-30 01:44	SECRET	Embassy Nairobi

Appears in these articles:

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DEPT FOR AF A/S CARSON, INL/C/CP: JANE BECKER, NSC FOR
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E.O. 12958: DECL: 09/01/2019
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SUBJECT: VISAS DONKEY: CORRUPTION 212(F) VISA REVOCATION

REF: A. 2008 STATE 81854
[1](#)B. Td-314/011589-09

Classified By: Classified by Ambassador Ranneberger for reasons 1.5 (b)

and (d).

¶1. (C) Embassy is seeking a security advisory opinion under Section 212(f) of the Immigration and Nationality Act, Proclamation 7750, suspending the entry into the United States of Amos Sitswila Wako and members of his family. Wako was born in Kakamega, Western Province, Kenya on July 31, ¶1945. Post strongly believes Mr. Amos Wako has engaged in and benefited from public corruption in his capacity as Attorney General for the past 18 years by interference with judicial and other public processes, and that this corruption has had a serious adverse impact on U.S. national interest in the stability of democratic institutions in Kenya, U.S. foreign assistance goals and the international economic activities of U.S. businesses. The following provides information requested in ref a, paragraphs 26-28.

¶2. (C) Amos Wako has been Kenya,s Attorney General (AG) for the past 18 years. During this period, despite a string of major corruption scandals, he has not only failed to prosecute successfully a single senior governmental figure but he also has actively thwarted their prosecution. The Attorney General has been repeatedly accused by civil society groups as well as the head of the Kenyan Anti-Corruption Commission, Justice Aaron Ringera, of failing to prosecute cases of official corruption. Others have noted the AG,s poor quality of legal advice to the government that helped to facilitate both the Anglo-Leasing and Goldenberg mega-scandals by lending his stamp of approval to fraudulent contracts that were the basis for stealing over a billion dollars from the Kenyan government. At the same time, in a pattern of supporting Kenya,s culture of impunity, Wako has been identified by the UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions in Kenya as &the chief obstacle to prosecuting anyone in authority for extrajudicial executions.8 Amos Wako has been AG since 1991, serving under Presidents Moi and Kibaki. He is married with two children.

¶3. (C) Wako,s corrupt practices have been investigated and documented in five reports. The first is the Report of the Judicial Commission of Inquiry into the Goldenberg Affair (October 2005), another initiative of the Kibaki administration to investigate a massive financial scam in the mid-1990s. The second is the Kenya National Assembly,s Public Accounts Committee,s report on the Anglo-Leasing scandal (March 2006), a public contracting scam which resulted in the payment of hundreds of millions of dollars to non-existent companies in Europe that were ostensibly to provide big ticket items for the GOK, including ships, passport equipment, etc. The third is the Kenya Anti-Corruption Commission,s (KACC) status report to President Kibaki on a number of the Anglo-Leasing contracts (June 2006). Fourth is the report of the United Nations Special Rapporteur on extrajudicial killings or summary executions Mission to Kenya (February 2009) which discussed police killings and post-election violence. The fifth is the Report of the Commission to Investigate Post-Election Violence (Waki Report) October 2008). Goldenberg Report

¶4. (C) Mwai Kibaki was elected President of Kenya in 2002 on an anti-corruption platform that ended then President Moi's 24-year rule. While there was great expectation of change, particularly in dealing head-on with corruption, a number of individuals that had served President Moi remained in office. One of those was the veteran Attorney General, Amos Wako, who had already been in office for 11 years at the time of Kibaki,s assumption of power. One of the scandals that Kibaki inherited was the Goldenberg affair. The Goldenberg affair was a scheme in which Kenyan government export subsidies were paid out to Goldenberg International and a range of companies around the world for gold that may or may not have been exported and was likely smuggled into Kenya from the Democratic Republic of the Congo. It is clear that senior government officials in the Moi administration were complicit and took payments for their complicity. By some estimates, this scam, which reportedly lasted approximately

two years (1991-1993) cost Kenya \$600 million.

15. (C) Commissioned by President Kibaki, Justice Bosire produced the Report of the Judicial Commission of Inquiry into the Goldenberg Affair, published in October 2005. Wako figures prominently in the report.

16. (C) The Goldenberg Report makes clear that the Attorney General failed to move on the scandal, even as details of its magnitude and the senior level of officials allegedly involved were revealed. In what is a pattern of behavior, the AG did not file the first case relating to the Goldenberg scam despite it having already been the subject of widespread media coverage and an investigation by the National Assembly's Public Accounts Committee. The first case was filed by the Law Society of Kenya. The AG, according to the report, &objected to the prosecution on the ground that he was to undertake his own prosecution . . . & The AG did the same in a case pursued by then MP Raila Odinga in 1995 where &once again the Attorney General moved swiftly to take over and terminate this prosecution.⁸ Meanwhile, the report found that, prior to these efforts to bring Goldenberg cases to court, &we did not receive any evidence to show that the Attorney General moved to order police investigations into the affair. We can only conclude that no such action was undertaken.⁸ The report notes that of the nine cases eventually filed by the AG, &the common denominator in all these cases is that none of them was ever concluded from 1994 when they were instituted to 2003 when this Commission was formed thereby leading to the termination of these cases.⁸ The report added, &In all these cases the record shows the reluctance on the part of the Attorney General,s officers and counsels for the accused persons to proceed.⁸ &The parties seemed to move in circles and at a snail,s pace speed,⁸ said the report. Continuing, the report notes, &there was in short extreme lethargy in the prosecution of these cases.⁸

17. (C) The report focused specifically on the last point above. In paragraph 773, the Commission found that & . . . even after charging the suspects which it had selected the Attorney General,s office appears to have proceeded with the cases in a most haphazard and lethargic fashion.⁸ The report then proceeds to describe the &chaotic situation⁸ caused by the repeated initiation, withdrawal, and consolidation of cases. Further, the report lays out repeatedly its concern about the way in which the cases were handled, indicating that the way in which the AG proceeded inevitably led to a lack of prosecutorial success. Paragraphs 776 through 779 of the report describe this situation as follows:

-- &An examination of the framed charges in the foregoing cases reveals that most of them were in many respects the same. They related to the same offences and the same accused persons. It is not clear why the office of the Attorney General had to bring several cases against the same accused persons.⁸

-- &There was also a further negative effect of creating needless delays through the chaotic situation caused by these many cases. It has been seen for instance that charges would be filed in 1995 only to be withdrawn in unexplained circumstances in 1997. In other cases a charge would be filed with some accused persons but leaving out others. Eventually the case would also be withdrawn to consolidate it with another one with the other accused persons.⁸

-- &On the face of it, this was a pointless merry go round resulting in serious delay. In this scenario it is not surprising to note that although the Attorney General commenced Goldenberg related prosecutions in 1994 it was not until 1998 that the hearing of only one case commenced. The others as we have noted did not proceed to hearing.⁸

-- &The delays and the multiplicity of cases gave Mr. Pattni and other accused persons the perfect excuse to lodge High Court Miscellaneous Civil case No. 322 of 1999 and Court of

Appeal Civil Application No. 301 of 1999 in which they complained that the delays and the many cases had, among other things, prejudiced them and violated their constitutional rights.⁸

18. (C) As can be seen throughout the AG,s career, it is his ability to obfuscate and confuse while giving an appearance of action that has so successfully stymied the prosecution of Kenya,s many mega-scandals. It is a skill that has kept him in office, provided him with personal rewards, and served to damage both Kenya,s movement toward a stable democracy and U.S. interests in that same stable democracy.

Kenya National Assembly,s Public Accounts Committee,s report on the Anglo-Leasing scandal

19. (C) The Anglo-Leasing scandal remains, like Goldenberg, among the most damaging and far reaching corruption cases in Kenya,s history. In short, Anglo-Leasing was one of a series of phantom entities used to perpetrate fraud on the Kenyan taxpayer through non-delivery of goods and services alongside significant overpricing. Again, the beneficiaries appear to be a number of GOK officials, including at the most senior levels. And again, not a single senior government official has been successfully prosecuted for the theft of hundreds of millions of U.S. dollars from Kenya. Once more, the Attorney General played a key role in ensuring that senior Kenyan officials were protected from prosecution. At the same time, his performance as the principal legal advisor for the Government of Kenya was questionable at best. In fact, it appears that he and his office expended its effort almost exclusively on providing comfort to the contractors about the GOK,s abilities to honor contracts rather than the other way around. Since many of the beneficiaries of these contracts were Kenyan citizens and/or GOK officials, it is clear that the AG was focused primarily on protecting those in Kenya,s political and business elite at the expense of the people and government as a whole.

110. (C) The Public Accounts Committee (PAC) report speaks directly to the role of the AG on pages 49 and 50. The bottom line, according to the PAC, is that: (a) the AG abdicated his responsibilities by not participating in all stages of the procurement process, including in carrying out/verifying due diligence; and (b) the AG felt obliged to protect the interests of foreign investors but not those of the government for which he is advisor. In conclusion, &the Committee found him incapable of advising his client adequately and a little too late to be charged with undertaking any meaningful reforms in the Kenya Law Office.⁸

111. (C) Key findings of the PAC relating to the AG are as follows:

-- &The Committee finds that whereas the provision of the procurement regulations empower the Attorney General to participate in all stages, he has not done so in practice. This, in the view of the Committee is an abdication of his responsibilities.⁸

-- &Secondly, the Attorney General has taken an unbalanced and partisan view of his role in government contracts. He feels obliged to protect the interests of the foreign investors but not those of the government for which he is the advisor.⁸

-- &The Attorney General in giving a legal opinion was merely for the comfort of the financier, it is difficult to understand why such comfort was not required by the Government. His office misled the Committee that all the comments suggested for inclusion in the final document had been incorporated (Note: This is reference to one specific Anglo-Leasing contract.). The Office of the Attorney General had raised serious issues and misnomers in the agreement entered into with Anglo Leasing & Finance Limited.⁸

-- &The Committee established that many of the comments as forwarded by the Attorney General,s office had not been captured in the final document yet the Attorney General,s

office approved the contract agreement. This is clearly a case of serious negligence.⁸

-- &While taking evidence, the Committee was taken through a host of reforms the Attorney General intends to undertake in his department to ensure better results are realized by the Government. Since the Attorney General has been in office from 1991 to date, it is difficult to believe that he was not aware of the weaknesses of the department for the entire period. The Committee finds him negligent in representing his client but keen on paper work to shield himself.⁸

-- &The Committee noted that the Attorney General had been unable to exercise the functions of his office. In the Passport Issuing Equipment Project, the Attorney General was unable to show that he took adequate steps to ensure that the Agreement signed was favorable to the Government.⁸

-- The report also details how both the Chief Magistrate and the Attorney General's office (responsible for the Director of Public Prosecutions - DPP) worked to frustrate one particular Anglo-Leasing case. The Director of Public Prosecutions was fired just after the case began and one and a half months later he was replaced as DPP by an individual who was Chief Defence Counsel for one of the accused in the Anglo-Leasing case. As a result, & . . . the Committee did not foresee any possibility of fair prosecution, and possible effort to pursue the matters expeditiously.⁸

¶12. (S) The conclusions of this report again demonstrate the AG's ongoing role in complicating, obstructing and ultimately killing the ability of the government to prosecute corruption. The AG is seen by his own colleagues as continuing to protect their interests. In ref b report from 2009, it is clear that prominent members of the cabinet believe that the AG successfully thwarted Anglo-Leasing prosecution and that he received direct payment for his work.

KACC) Status of the Investigation of Security Related Contracts

¶13. (C) In a June 2006 document, the Kenya Anti-Corruption Commission (KACC) provided President Kibaki with an update on the Anglo-Leasing investigations, including providing information on key players and their involvement. The section on the AG is as follows:

-- &Other than taking the responsibility for the review of the contracts by his office that facilitated the perpetration of the frauds by contracting ministries, he also gave his personal opinion in a number of financing contracts in which he purported to validate the use of promissory notes without consultations with Treasury as to the nature of the risk. It is understood that even as he approved the use of promissory notes, the Government was paying heavily for a contract in which promissory notes had been discounted to a third party by the supplier who never delivered as per his contract and the Government had to pay the non-delivery notwithstanding. His legal opinions further make reference to CAP 422 (External Loans and Credit Act) and are categorical that the said piece of legislation has been complied with when in actual fact it had been violated. The Honourable Attorney General gave that opinion without conferring with Treasury to verify whether or not they had complied with the Act. These legal opinions are given without any due diligence being undertaken to confirm that all laws and regulations have been adhered to, suppliers and financiers have been vetted, status of registration confirmed and their capacity to contract also confirmed. There is a possibility of prosecution.⁸

-- Listing the &Challenges to the Investigations,⁸ the KACC told the President that one of those challenges was: &(c) investigating the complicity of a sitting Attorney General who would have to prosecute cases.⁸

UN High Commissioner for Human Rights) UN Special
Rapporteur on Extrajudicial, Arbitrary or Summary Executions
Mission to Kenya; 16-25 February 2009

¶14. (C) This report and the information that follows from the Waki report (see below) goes directly again to AG Wako,s involvement in public official corruption through interference in public processes. The UN,s Special Rapporteur said:

-- &In my final report, I will explain in detail the shortcomings of the two key component parts of the criminal justice system apart from the police. They are the Office of the Attorney General and the judiciary.8

-- &The exchange, reproduced in full in the Waki Commission report, between Justice Waki and Attorney-General Amos Wako, provides a vivid illustration of the latter,s role as the chief obstacle to prosecuting anyone in authority for extrajudicial executions. He has presided for a great many years over a system that is clearly bankrupt in relation to dealing with police killings and has done nothing to ensure that the system is reformed.8

-- &Public statements lamenting the system,s shortcomings have been utterly unsupported by any real action. In brief, Mr. Wako is the embodiment in Kenya of the phenomenon of impunity.8

Report of the Commission to Investigate Post-Election Violence

¶15. (C) This Commission, commonly known as the Waki Commission, investigated the violence perpetrated on the Kenyan people in the aftermath of the December 2007 elections. The AG appeared before the Commission and discussed the lack of prosecution in the aftermath of political violence following multiple Kenyan elections including the 2007 poll. Concluding their discussion of AG Wako in the report, the Commission wrote:

-- &In view of the lack of any visible prosecution against perpetrators of politically related violence, the perception has pervaded for some time now that the Attorney-General cannot act effectively or at all to deal with such perpetrators and this, in our view, has promoted the sense of impunity and emboldened those who peddle their trade of violence during the election periods, to continue doing so.8

¶16. (C) Seen here and elsewhere in this submission, one can find an Attorney General who has successfully maintained an almost perfect record of non-prosecution. He accomplishes this through the most complex of smoke and mirrors tactics, seeking to appear to desire prosecution while all along doing his utmost to protect the political elites. His reward, as noted in ref b, is monetary as well as his unprecedented tenure in office) a sinecure if there ever was one. It should be noted that in 2009 the Attorney General,s salary was increased from an already healthy \$6,900 per month to an obscene \$22,000 per month -- an even greater reward for an individual who has spared many of those responsible for Kenya,s high level of corruption.

Serious Effect on U.S. National Interests

¶17. (C) Attorney General Amos Wako,s 18 years of involvement in public corruption through interference with judicial and other public processes have had serious adverse effects on those U.S. interests specified in Proclamation 7750 as well as U.S. foreign policy priorities of promoting democracy and good governance and sustainable economic development. Overarching all U.S. interests in Kenya is the need for the GOK to implement the reform agenda agreed to by all major political parties in the aftermath of the 2008 post-election violence. This agenda -- which focuses on accountability for the violence and preventing corruption through constitutional revision, electoral, judicial, police and land reform, is essential to democratic success, economic prosperity, stability and security in Kenya. As made clear by Secretary Clinton during her August 2009 visit to Kenya, pressing for implementation of the reform agenda and dismantling Kenya,s culture of impunity is at the core of U.S. policy. Without

significant progress on the reform agenda, including significant curbs on corruption, Kenya will almost certainly repeat (or surpass) the election-related violence ahead of/during/after 2012 elections. By obstructing due process and committing corrupt acts, Wako has repeatedly demonstrated that he is an obstacle to reform in Kenya and a major contributor to the country's culture of impunity. As a result, he is pillar standing against vital U.S. interests in Kenya.

¶18. (C) Stability of Democratic Institutions and Nations: AG Wako's efforts to ensure that those most responsible for grand scale corruption and election violence in Kenya are not punished has made it possible for both to continue to flourish thereby undermining the rule of law, judicial and law enforcement institutions. At the same time, the lack of accountability for previous Kenyan political violence resulted in the worst episode of election-related violence in Kenya's history as an independent nation) over 1000 dead and more than 350,000 displaced with not a single case brought against any perpetrator of violence despite extensive documentary evidence. In the aftermath of the post-election violence, Mr. Wako's obstruction in both the Goldenberg and Anglo-Leasing scandals means that many of those suspected of stealing massively from the country's treasury have remained not only unpunished but on the job as Ministers of Government to this day. His protection has ensured that they continue to be in position to steal funds to support election campaigns, and incite/support violence. At the same time, it is clear to all Kenyans that participating in public corruption, especially if you are among the political elite, does in fact pay. There is little, if any threat of punishment. The corrosive nature of this culture of impunity has: directly undermined the ability of the Kenyan economy to grow at levels required to move the population to middle income status; built a permanent level of disregard for the rule of law and the institutions that are meant to enforce those laws; and reinforced a system whereby the government does not serve its population, but rather further marginalizes the population while enriching those in power. The bottom line is that the Kenyan state is weaker and less able to enhance the lives of its population and maintain the security of the country's already porous and dangerous border areas.

¶19. (C) U.S. Foreign Assistance Goals: According to Transparency International, the Goldenberg scam alone directly cost the Kenyan taxpayers an estimated \$500 million. Anglo-Leasing as well cost (and may still be costing due to ongoing payments) the Kenyan government and people hundreds of millions of dollars. Under AG Wako the return of even a fraction of these funds, which could be possible with a vigorous prosecution, could bring significant benefits to an economy the size of Wyoming. The election violence, which might have been prevented, pushed GDP in the first quarter of 2008 into negative territory and forced the country to attempt an economic rebound in the midst of the worst global recession since the 1930's. The same violence resulted in the loss of crops and halted planting such that, combined with the current drought, approximately 10 million Kenyans (nearly 25 percent of the population) are food insecure. With an action-oriented AG, not busy protecting political elites in return for rewards, previous political violence may have been punished, mitigating what took place after the 2007 elections. Because the scale of the Goldenberg and Anglo-Leasing scams were so massive, it directly caused destabilization of the Kenyan economy, damaged the investment climate and, eventually, resulted in the suspension of the IMF and World Bank programs in Kenya, thereby negatively affecting U.S. foreign assistance goals.

¶20. (C) Former Kenyan Economic Secretary Terry Ryan testified before the judicial commission investigating Goldenberg that the Central Bank of Kenya printed billions of shillings on the premise that exporters would bring in foreign currency and stabilize the exchange rate. When those exports proved fraudulent, the Kenyan shilling sharply depreciated. Ryan told the inquiry that the impact of the Goldenberg scam would continue to haunt the Kenyan economy for another two decades.

For example, according to witnesses in the Goldenberg inquiry, although it took 10 years for Kenya's money supply to grow from 20 billion Ksh in 1980 to 50 billion Ksh in 1990, the money supply soared to 100 billion Ksh by January 1993, sparking rampant inflation and the devaluation of the Kenya shilling from an average of 24.08 Ksh to one USD in 1990 to 68.16 in 1993. Staple maize and bean prices rose by 334 percent and 233 percent over the same period. Government borrowing from commercial banks grew by more than 400 percent. If the Attorney General had not been so clearly acting on behalf of those suspected of corruption, prosecution of Goldenberg suspects might have not only resulted in some kind of return of funds but it may have prevented the equally damaging Anglo-Leasing scandal.

¶21. (C) International Activity of U.S. Businesses: In his 18 years in office, Attorney General Wako has institutionalized the culture of impunity that is rife in Kenya. Under his leadership, the Attorney General's office routinely ensures that cases of corruption are not filed, are withdrawn or are made so complex that they are simply dropped. In 18 years, not a single, senior GOK official has been successfully prosecuted for corruption in a country that is consistently rated amongst the most corrupt in the world. That is a remarkable record, given that at least two scandals (and there have been more) that resulted in losses to Kenya of several hundred million dollars each. That level of impunity only encourages greater and greater corruption throughout Kenya at all levels. The resulting corruption has a direct impact on U.S. business attempting to operate in Kenya from the police roadblocks set up along major transport routes, to moving goods to/from the Port of Mombasa, to fighting counterfeit products that are undermining American manufacturers based here, to simply being able to operate on a day-to-day basis with bribe-seeking local and regional officials. The AG's corruption) protecting the most corrupt from accountability) ensures that U.S. businesses struggle in Kenya.

In Summary

¶22. (C) Attorney General Amos Wako is at the center of the corruption problem in Kenya. Post strongly believes Mr. Amos Wako has engaged in and benefited from public corruption in his capacity as Attorney General for the past 18 years by interference with judicial and other public processes. The record from the reports detailed in the paragraphs above demonstrate a clear pattern of ensuring that the justice system works to protect those involved most in stealing public funds from the general population. The reports show that the Attorney General was &negligent,8 showed a &reluctance to proceed,8 &extreme lethargy,8 created &needless delays,8 engaged in an &abdication of responsibilities,8 and was paid for his trouble (ref b). Finally, one report summed it up by accurately describing the AG as the &embodiment in Kenya of the phenomenon of impunity.8 Each of these reports has also demonstrated how funds lost to the GOK are often diverted not only for the personal gain of senior officials but also to influence the results of Kenyan elections. In addition, the AG's unwillingness to hold accountable those involved in election violence over the years led in part to the single worst episode of conflict and death in Kenya since independence in ¶2008. For these reasons, Post believes that Mr. Amos Wako is the major obstacle to ending the culture of impunity in Kenya and recommends that he be made ineligible under Presidential Proclamation 7750.

Additional Information Required For Finding

¶23. (C) Mr. Amos Wako has not been informed of the fact that he may be ineligible for a U.S. visa under section 212(f) of the INA and Proclamation 7750.

¶24. (C) Wako currently holds an A-1 visa, issued September 27, 2005 and expiring September 27, 2010.

¶25. (C) Wako has traveled to the U.S. seven times since 2003.

The port of entry for all visits was New York. All of his visas have been G2 or A1. Wako last departed the U.S. in December 2008. He currently uses a diplomatic Kenyan passport, number D009450. He is married to Flora Ngaira (we have no record of her having received a U.S. visa) and has two children, Julius and Debora. We have no record of Debora having received a visa. The son, Julius Wako, (DPOB: June 26, 1974, Nairobi, Kenya) was issued one visa, a B1/B2, that expired on August 19, 2008. He has a regular Kenyan passport, A1086975.

¶26. (C) Because of the serious wide-reaching nature of Mr. Amos Wako's corruption, Post recommends that Mr. Amos Wako be excluded for travel to the U.S. under section 212(f) of the INA and that no exception be granted.

Ranneberger